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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,560	03/11/2004	Yoshimichi Nishio	040112	4831

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EXAMINER	
ALUNKAL, THOMAS D	
ART UNIT	PAPER NUMBER
2627	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,560	NISHIO ET AL.	
	Examiner	Art Unit	
	Thomas D. Alunkal	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 7 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non statutory subject matter.

Claim 7 is drawn to a "program" *per se* or non-tangible signal with "program", per se, or non-tangible computer readable medium (as defined in the specification on page #, lines # as being a signal) with "program", per se, as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in tangible computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed tangible computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor

statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-10 rejected under 35 U.S.C. 102(b) as being anticipated by Tosaki et al (hereafter Tosaki) (EP 1,067,544 A1).

Regarding claim 1, Tosaki discloses an information processing device (Figure 1) comprising: a key-bunch determination unit which determines whether key-bunch information is recorded on a recording medium or not (Paragraphs 39-40 and Figure 1, Elements 3 and 13. Specifically, key information for deciphering the data information is played back by the optical pickup), a wobble determination unit which determines whether the recording medium has a wobble or not if the key-bunch determination unit determines that the key-bunch information is recorded (Figure 1, Element 10 and Paragraph 41. Here, because key information has been detected, wobble signals are detected), and a restriction unit which restricts an operation of reproduction from the recording medium if the wobble determination unit determines that the recording medium has a wobble (Paragraphs 41-42 and Figure 1, Element 15. Specifically, disk

judging means takes input from the wobble detecting means and judges the disk to have wobble).

Regarding claim 2, Tosaki discloses a disk distinction unit which distinguishes the type of the recording medium (Figure 1, Element 14), wherein if the disk distinction unit determines that the recording medium is of a type capable of recording key-bunch information, the key-bunch bunch unit then determines whether key-bunch information is recorded on the recording medium (Figure 1, Element 13 and Paragraph 41. Specifically, protective condition judging means determines if there is code indicating the existence of copyright protection).

Regarding claim 3, Tosaki discloses wherein the wobble determination unit does not make the determination on whether the recording medium has wobble or not, if the key-bunch determination unit determines that no key-bunch information is recorded (Paragraph 44. Specifically, prevention of playback is occurs when key-bunch/control information is present. Thus, if key-bunch/control information is not present, determination of writable or non-writable does not occur).

Regarding claim 4, Tosaki discloses wherein the restriction unit restricts the operation of reproduction by inhibiting reproduction from the recording medium (Paragraph 42).

Regarding claim 6-8, these claims contain limitation similar to those in claim 1 and are rejected over the same grounds.

Regarding claim 9, Tosaki discloses a player comprising: a reading unit which reads information recorded on a recording medium (Figure 1, Element 3), a detection

unit which detects a wobble of the recording medium (Figure 1, Element 10), a processing unit which processes the information read by the reading unit to make the information reproducible (Figure 1, Element 7), and an information processing device comprising a key-bunch determination unit which determines whether key-bunch information is recorded on the recording medium or not (Figure 1, Element 13), a wobble determination unit which determines whether the recording medium has a wobble or not if the key-bunch determination unit determines that the key-bunch information is recorded (Figure 1, Element 10 and Paragraph 44), and a restriction unit which restricts an operation of reproduction from the recording medium if the wobble determination unit determines that the recording medium has a wobble (Paragraphs 41-42 and Figure 1, Element 15. Specifically, disk judging means takes input from both wobble detecting means and judges the disk to have wobble).

Regarding claim 10, this claim contains limitations similar to those in claim 9 and is rejected over the same grounds.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tosaki as applied to claims 1-4 and 6-10 above, and further in view of Applicant's Admitted Prior Art.

Tosaki does not disclose the further key-bunch information limitations of claim 5. In the same field of endeavor, Applicant's Admitted Prior Art discloses that well known conventional methods for prohibiting illegal copies of media contain key-bunch information which is an MKB (Media Key Block) used in CPPM (Content Protection for Prerecorded Media) and CPRM (Content Protection for Recordable Media).

It would have obvious to one of ordinary skill in the art at the time of the applicant's invention to provide the Tosaki's method of preventing illegal use of an optical disk with the Applicant's Admitted Prior Art of the well known copyright protection features MKB (Media Key Block) used in CPPM (Content Protection for Prerecorded Media) and CPRM (Content Protection for Recordable Media), motivation being to increase copy protection and reduce illegal copying.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas D. Alunkal whose telephone number is (571)270-1127. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (571)272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thomas Alunkal

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